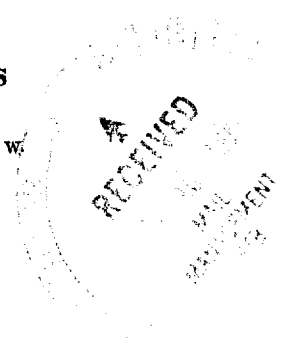


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May 16, 2000

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BY HAND DELIVERY

Honorable Vernon L. Williams
Surface Transportation Board
Case Control Unit
Attn: STB Ex Parte No. 582 (Sub-No. 1)
1925 K Street, N.W.
Washington, D.C. 20423-0001

MAY 16 2000

Part of
Public Record

Re: Ex Parte No. 582 (Sub-No. 1),
Major Rail Consolidation Procedures

Dear Mr. Williams:

Enclosed for filing in the above-referenced proceeding are the original and 25 copies of the Comments of Central and South West Services, Inc. Also enclosed is a 3.5-inch diskette containing the text of the Comments in WordPerfect format.

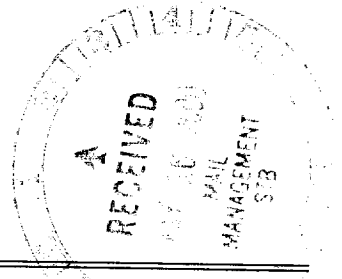
Please acknowledge receipt of the enclosed by stamping and returning to our messenger the enclosed duplicate of this letter.

Sincerely,

Christopher A. Mills

CAM/mfw
Enclosures

BEFORE THE
SURFACE TRANSPORTATION BOARD



MAJOR RAIL CONSOLIDATION
PROCEDURES

)
) Ex Parte No. 582 (Sub-No. 1)
)
)

COMMENTS OF
CENTRAL AND SOUTH WEST SERVICES, INC.

RECEIVED
Office of the Secretary

MAY 16 2000

Central and South West Services, Inc. ("CSWS") ^{Part of} ~~Public Record~~ ^{Submissions}
the following comments in response to the Board's Advance Notice
of Proposed Rulemaking ("Advance Notice") served March 31, 2000.

I. STATEMENT OF INTEREST

CSWS is an affiliate of Central and South West Corpora-
tion, an investor-owned public utility holding company based in
Dallas, TX. Central and South West Corporation's operating
(electric utility) subsidiaries include Central Power and Light
Company, Public Service Company of Oklahoma, Southwestern Elec-
tric Power Company, and West Texas Utilities Company. These
companies serve 1.8 million customers in an area covering 152,000
square miles of Texas, Oklahoma, Louisiana and Arkansas.

CSWS purchases fuel, including coal, for use in power
plants operated by the Central and South West Corporation
subsidiaries. CSWS is also responsible for making transportation
arrangements for the coal consumed at these plants. The CSWS-
affiliated power plants collectively burn more than 18 million

tons of western coal annually, most of which is produced in the Powder River Basin although approximately one million tons come from mines in Colorado. All of the coal consumed at these plants moves by rail, and is originated by either the Burlington Northern and Santa Fe Railway ("BNSF") or the Union Pacific Railroad ("UP").

CSWS is a member of the Western Coal Traffic League, which is also filing Comments in response to the Board's Advance Notice in this proceeding on behalf of its members and several other electric associations and individual coal shippers (collectively the "Coal Shippers"). CSWS supports the proposed rule amendments described in the Coal Shippers' Comments. CSWS is filing these separate Comments to inform the Board with respect to a "bottleneck" problem involving one of its affiliates, Southwestern Electric Power Company ("SWEPCO"), that would be exacerbated if, as a result of a BNSF/Canadian National ("CN") combination, the Kansas City Southern Railway Company ("KCS") merges with either BNSF or UP.

II. BACKGROUND ON SWEPCO COAL MOVEMENTS

SWEPCO operates two large coal-fired plants, the Flint Creek plant in northwestern Arkansas and the Welsh plant in northeastern Texas. These plants, which together burn between eight and nine million tons of Powder River Basin ("PRB") coal annually, are both served exclusively by the KCS.

Both BNSF and UP serve the PRB mine origins, and both carriers interchange with KCS at Kansas City. KCS transports the coal from Kansas City to the plants, a distance of about 150 miles in the case of the Flint Creek movement and about 400 miles in the case of the Welsh movement. CSWS has a contract with KCS that governs the movement of coal from Kansas City to both the Flint Creek and the Welsh plants, and separate contracts with BNSF and UP that govern movements via each carrier from the PRB mines to Kansas City.

CSWS worked very hard to structure its contractual arrangements with the railroads, only recently achieving results that allow SWEPCO to take advantage of the origin competition between BNSF and UP for the portion of the Flint Creek/Welsh movements between the mines and Kansas City (a distance of 750 to 800 miles). This has resulted in competitive freight rates in service for most of the distance between the PRB origins and the plants, and thus lower delivered fuel costs for SWEPCO's customers.

III. EFFECT OF FUTURE MERGERS ON COMPETITION FOR THE SWEPCO COAL MOVEMENTS

CSWS has been able to take advantage of the origin competition between BNSF and UP for the transportation of PRB coal to the SWEPCO plants notwithstanding the KCS bottleneck at destination because KCS is unaffiliated with either origin carrier, and thus basically indifferent as to which one handles

the portion of the movement between the PRB and Kansas City. As a result, the overall freight rates are lower than if one of the two origin carriers also had the bottleneck destination monopoly, which would enable it to foreclose competition by the other origin carrier. This situation would almost certainly change, however, if further major rail mergers occur.

Following the announcement of the BNSF/CN merger, the other major railroads, including UP, publicly stated that if a BNSF/CN merger were approved by the Board, they would be forced into additional mergers of their own with the ultimate result that North America may have only two transcontinental rail systems. This theme was repeated at the hearings earlier this year in Ex Parte No. 582, and it was one of the reasons why the Board imposed a 15-month moratorium on major rail consolidations and instituted this rulemaking proceeding.

CSWS believes the concerns expressed by the Board have merit, and that if the BNSF/CN merger proceeds, it is highly likely that further major rail mergers will follow shortly thereafter. One of these almost certainly will involve the KCS, which will be unlikely to survive as an independent carrier. Given the present marketing alliance between KCS and CN/IC, and the fact that UP already has good routes between the upper Midwest and Texas/Mexico, the most probable scenario is that KCS will be acquired by BNSF/CN.

If this were to occur, BNSF/KCS would no longer be neutral as to which of the two PRB origin carriers gets the portion of the SWEPCO coal movements west of Kansas City. BNSF obviously would favor its own single-line, long-haul route from origin to destination, and would do everything in its power to foreclose competition by UP.¹ BNSF would be able to accomplish this by refusing to offer a rate for transportation over its bottleneck line segments between Kansas City and the Flint Creek and Welsh plants, as KCS presently does. Under the Board's Bottleneck rules (Central Power & Light Co. v. Southern Pac. Transp. Co., Nos. 41242, et al. (December 31, 1996), clarified (April 30, 1997)), the only way CSWS could preserve the existing origin competition would be, first, to obtain a contract with UP for the competitive portion of the movement west of Kansas City, and second, to obtain a routing order from the Board which requires that CSWS demonstrate anticompetitive conduct by BNSF under the Board's competitive access rules.

These requirements are very onerous, particularly given that UP and BNSF strongly oppose bottleneck relief and presently have little interest in poaching each other's captive coal customers. In its Advance Notice, the Board has acknowledged that its present bottleneck rules are problematic by announcing that it will consider "requiring merger applicants to offer, upon

¹ The same would be true in reverse if KCS were to end up as part of the UP system, rather than BNSF.

request, contracts for the competitive portion of joint-line routes when the joint-line partner has a bottleneck segment." The Board also indicated it will consider eliminating the requirement that a shipper file a competitive-access complaint to obtain a through route before seeking bottleneck relief (where the bottleneck destination carrier, for example, also serves the origin). Advance Notice at 7-8.

It is encouraging that the Board has recognized that its present bottleneck rules are unsatisfactory. However, the first part of the proposed remedy is inadequate. Requiring a merger applicant to offer a contract for the competitive portion of a coal route *before* a shipper can obtain a bottleneck rate does not solve the problem, because the carrier would remain free to offer a high (non-competitive) rate or impose other conditions (such as a requirement that the shipper agree to an unacceptably long contract term) that make the contract-first remedy ineffective from a practical standpoint.

As described in more detail in the Coal Shippers' joint Comments, the only meaningful remedy is to require merger applicants to provide a bottleneck rate on request, without any preconditions. This would permit the shipper to finalize arrangements for transportation over the bottleneck segment before obtaining proposals for transportation over the non-bottleneck portion of the route -- and provide the non-bottleneck carriers with an incentive to cooperate. Accordingly, CSWS urges the

Board to adopt the new bottleneck rules for merging carriers
described in the Coal Shippers' Comments.

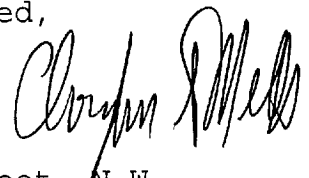
OF COUNSEL:

Slover & Loftus
1224 Seventeenth Street, N.W.
Washington, D.C. 20036

Dated: May 16, 2000

Respectfully submitted,

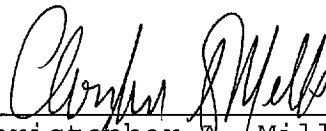
William L. Slover
Christopher A. Mills
Slover & Loftus
1224 Seventeenth Street, N.W.
Washington, D.C. 20036
(202) 347-7170



Attorneys for Central and
South West Services, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of May, 2000, I caused a copy of the foregoing Comments to be served on all persons designated as a Party of Record or Member of Congress in the Board's decisions in this proceeding served April 28 and May 10, 2000, by first-class United States Mail.



Christopher A. Mills